

**IN THE UNITED STATES DISTRICT COURT  
FOR WESTERN DISTRICT OF PENNSYLVANIA**

LESLIE R. KELLY,	)	Docket No. 03-368E
	)	(Judge Susan Paradise Baxter)
Plaintiff,	)	
	)	ELECTRONICALLY FILED PLEADING
vs.	)	
	)	AFFIDAVIT PURSUANT TO
MARTY SAPKO, et al.,	)	FED.R.CIV.PRO. 56(f) IN OPPOSITION TO
	)	DEFENDANTS' MOTION FOR SUMMARY
Defendants	)	JUDGMENT
	)	
	)	Filed on behalf of: Plaintiff Leslie R. Kelly
	)	
	)	Counsel of record for this party:
	)	Richard A. Lanzillo, Esq.
	)	Knox McLaughlin Gornall
	)	& Sennett, P.C.
	)	120 West 10 <sup>th</sup> Street
	)	Erie, PA 16501
	)	Telephone (814) 459-2800
	)	Facsimile (814) 453-4530
	)	Email rlanzillo@kmgslaw.com
	)	PA53811

**AFFIDAVIT PURSUANT TO FED.R.CIV.P 56(f) IN OPPOSITION  
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Richard A. Lanzillo, attorney for Leslie R. Kelly, hereby state the following pursuant to Fed.R.Civ.P. 56(f):

1. This action is presently pending before the Honorable Magistrate Judge Susan Paradise Baxter and involves claims arising out of injuries and constitutional violations sustained by Plaintiff while he was incarcerated at FCI McKean.

2. The pleadings remain open. Defendants have not filed an Answer to Plaintiff's Amended Complaint. Instead, Defendants have filed what they have styled as a Motion to Dismiss or, in the Alternative, for Summary Judgment (the "Motion").

3. Defendants' Motion makes a number of factual allegations with which Plaintiff disagrees.

4. Given the procedural posture of this case, Plaintiff has not had the opportunity to conduct any discovery to support his claims.

5. Plaintiff requires discovery to support his claims and refute the factual allegations made by Defendants in support of their Motion.

6. Among other subjects, Plaintiff requires discovery concerning the working conditions existing at the UNICOR facility at FCI McKean during the period of time that Plaintiff was assigned to work at the facility.

7. Plaintiff requires this discovery to be able to respond fully to Defendants' alternative request for summary judgment.

Respectfully submitted,

KNOX McLAUGHLIN GORNALL &  
SENNETT, P.C.

BY: /s/ Richard A. Lanzillo, Esq.

Richard A. Lanzillo, Esquire  
120 West Tenth Street  
Erie, PA 16501  
Telephone (814) 459-2800  
Facsimile (814) 453-4530  
Email rlanzillo@kmgslaw.com  
PA53811

# 663807